under the policy issued to the defendant – Exhibit N-7 enclosure (25).

It may be construed that the plaintiffs by this letter intended to repudiate the whole policy and not just the victim's claim under the said policy.

On the effect of such repudiation, *Halsbury's* Laws of England 4th Edition on Insurance Vol. 25 at paragraph 377 states:–

"The common law right is one which can only be exercised in relation to the whole contract. The insurers are not entitled to treat the contract as subsisting for some purposes, but not for others; *if they elect to repudiate the policy, there ceases for any purpose to be a contract between the parties.* It is an entirely different situation, governed by different principles, where insurers seek to repudiate, not the policy, but a claim under it." (emphasis supplied).

In this view, by its repudiation of the policy, the plaintiffs ceased to be bound by the contract. It follows that the plaintiffs had no duty or obligation to represent the defendant in effecting settlement of the claim by the victim of the accident against the defendant in Civil Suit 276/78 and more so to bind the defendant by such settlement. In my view in the absence of proper retainer by the defendant, it was wrongful for Mr. Varughese to consent to the settlement on behalf of the defendant on the claim against his interest. The fact that the defendant had earlier knowledge of the claim against him is irrelevant. Clearly there is some evidence of abusing the process of the court.

Next, the delay in making the application to set aside this judgment.

The Writ in this action for indemnity was issued on September 15, 1980. Substituted service was effected on September 12, 1981, and the judgment in default of appearance was entered on August 24, 1982. The application to set aside the judgment was filed on June 10, 1985. The delay in making this application was nearly 3 years.

The rule is that such application must be made promptly and within a reasonable time. But the rule also allows the Court in a proper case to disregard the lapse of time.

In the present case, the claim is for reimbursement of money already paid. Although the delay was necessarily long, the defendant was given reasonable grounds challenging the substituted service of the Writ. There are also points of law raised which are of public interest whether such manipulation by the insurers would bind the defendant. The plaintiffs are not in any way prejudiced by the delay.

In these circumstances I find that this is a fit case to disregard the lapse of time.

The appeal from the Senior Assistant Registrar's decision for these reasons is allowed. The defendant is given two weeks to file his Statement of Defence.

Order accordingly.

Solicitors: *Varughese & Co.; R.K. Menon & Co.*

HONG LEONG FINANCE BERHAD v. LEE CHENG HENG t/a LEE CHENG HENG EARTHWORKS & ANOR.

[A.C.J. (Yusoff Mohamed J.) December 28, 1986]
[Johore Bahru – Civil Suit No. 24-1037-1985]

Hire-purchase – Default in instalments – Repossession of vehicle – Sale of vehicle by owner – Claim for loss by owner against hirer – Allegation of sale below market price – Mitigation of damages – Owner's duty to act reasonably and responsibly – Hire-Purchase Act 1967, ss. 16(3) & 18(2).

This appeal against the decision of the Senior Assistant Registrar concerned a road grader under a hire purchase agreement dated May 26, 1983, executed between the plaintiffs as owners and the first defendant as hirer and the second defendant as guarantor. The total hire purchase price was $71,584.50 payable by initial deposit of $18,664.50 and 24 monthly instalments of $2,205.00 each. The first defendant defaulted payment from September 3, 1984. The plaintiffs determined the agreement and repossessed the vehicle on November 17, 1984. They sold it on September 11, 1985, and now claim the loss of $32,284.16. The Senior Assistant Registrar found as a fact the agreement to be a hire purchase agreement where the subject was a vehicle, and it thus raised an issue as to whether the Act applies to the present transaction. If it does, then all the ensuing remedies for breach of the Act would follow. The plaintiffs appealed.

Held, dismissing the appeal: (1) the decision of the Senior Assistant Registrar was right. Further paragraphs 9 and 10 of the Statement of Defence also raised the issue that the vehicle was sold by the plaintiffs at below the market price and that it was unfair to the defendants;

(2) the defendants were entitled to mitigate damages allegedly due from them. Having done this on behalf of the defendants, the plaintiffs were duty bound to act reasonably and responsibly and were actionable at the instance of the defendants;

(3) defendants should be allowed unconditional leave to defend.

Case referred to.-

(1) *Lau Hee Teah* v. *Hargill Engineering Sdn. Bhd.* [1980] 1 M.L.J. 145.

APPEAL FROM REGISTRAR.

T.S. Chong for the plaintiffs/appellants.
S. Gunasegaran for the defendants/respondents.

Cur. Adv. Vult.

Yusoff Mohamed J.: This is an appeal against the Senior Assistant Registrar's decision under Order 14, Rules of the High Court 1980. I dismissed the appeal on these grounds.

The plaintiffs' claim is based on a Hire Purchase Agreement dated May 26, 1983, executed between themselves as owners and the 1st defendant as Hirer and the 2nd defendant as guarantor. The subject matter is one Aveling Barford Super MG 6x6 Road Grader bearing registration No. JAT 6854 (the vehicle).

The total hire purchase price was $71,584.50 payable by initial deposit of $18,664.50 and 24 monthly instalments of $2,205.00 each. The 1st defendant having defaulted in paying the instalments from September 3, 1984, onwards, the Hire Purchase Agreement was determined by the plaintiffs who repossessed the vehicle on November 17, 1984, and who finally sold it on September 11, 1985, some ten months later.

The plaintiffs then commenced this claim for loss suffered to the amount of $32,284.16.

The defendants in their Statement of Defence stated that the Hire-Purchase Act 1967 (Revised 1978) (the Act) applies and the plaintiffs have breached both section 16(3) and section 18(2) of the Act in that after repossession, no proper notice as to the estimated value of the vehicle was given by the plaintiffs to enable the defendants to obtain a third person to pay the plaintiffs the estimated value of the vehicle, and that the plaintiffs did not endeavour to get the best price for the repossessed vehicle.

The plaintiffs on the other hand contended in their affidavit that the Act does not apply as the subject matter does not fall within any of the categories of goods listed in the amendment to the 1st schedule of the Act.

The Senior Assistant Registrar considered *Lau Hee Teah* v. *Hargill Engineering Sdn. Bhd.*(1) The SAR found as a fact that the agreement is without doubt, a Hire Purchase Agreement where the subject is a vehicle and it thus raised an issue as to whether the Act applies to the present transaction. If it does, then all the ensuing remedies for breach of the Act would follow.

I am in agreement with the SAR's decision and additionally I also find that paragraphs 9 and 10 of the Statement of Defence also raised the issue that the vehicle was sold by the plaintiffs at below the market price and that it was unfair to the defendants.

The plaintiff's affidavit at paragraph 9 contended that the sale was effected at the best price in order to minimise the defendants' losses. Paragraph 8 of the affidavit stated that valuation fees were paid (and therefore valuation was taken). The plaintiffs did not, however, disclose the true valuation of the vehicle.

The defendants, in my opinion, are entitled to mitigate damages allegedly due from them. Having done this on behalf of the defendants, the plaintiffs are duty bound to act reasonably and responsibly and are actionable at the instance of the defendants.

For these reasons, in my view, the defendants should be allowed unconditional leave to defend.

Leave to defend allowed.

Solicitors: *T.S. Chong & Co.; Vincent Lai & Co.*

OOI SIEW YOOK & ORS. v. LIM BAR KEE

[O.C.J. (Edgar Joseph Jr. J.) February 6 & 20, 1987]

[Penang – Originating Petition No. 33-3-86]

Practice and Procedure – Consent order – Variation of consent order – Whether court has jurisdiction.

The issue in this case was whether the court has jurisdiction to vary a consent order made in respect of a family company. The consent order arose out of a petition filed by the company.

Held: varying the consent order, the court has jurisdiction to vary a consent order.